In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 992

GENERAL MOTORS CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioner brought this suit in the district court against the United States and the Interstate Commerce Commission to set aside as arbitrary and unlawful an order of the Commission denying petitioner's claim against a number of railroads for reparations based on asserted overcharges on certain freight shipments (2a–5a).[1] The overcharges assertedly arose because the railroads computed their charges on one tariff (exceptions to class rates), while petitioner contended that they should have been based upon another tariff (mixed carload rating of the classification schedule). The railroads intervened as defendants and urged, as did the Commission itself, that the

[1] References are to the Appendix to petitioner's brief in the court of appeals.

order was lawful (30a, 31a). The United States, as statutory defendant, took no part in the district court proceedings other than to file an answer which neither opposed nor defended the Commission's order.

The district court ruled that, since petitioner had elected initially to bring its reparations claim before the Commission, rather than in a district court, Section 9 of the Interstate Commerce Act (49 U.S.C. 9) precluded the court from reviewing the Commission order (32a–35a).[2] The district court further held that "on the merits" there was a rational basis for the Commission's conclusions and order. The court entered an order dismissing the complaint (37a).

On appeal to the Court of Appeals for the Sixth Circuit, the United States filed a brief and presented oral argument, urging that the district court had jurisdiction to review the Commission's order.[3] It took no position on the merits, that is, whether the Commission's order was valid. Both the Commission and the railroads conceded in the court of appeals that the district court had jurisdiction to review the Commission's order, and the court of appeals so held. 299 F.

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[2] Section 9 gives any person who claims to have been damaged by a rail carrier the right to file a complaint before the Commission or to sue for damages in the district court, "but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt."

[3] *United States* v. *Interstate Commerce Commission*, 337 U.S. 426; *Great Lakes Steel Corp.* v. *United States*, 337 U.S. 952. See also, *Union Pacific R.* v. *Price*, 360 U.S. 601, 615, 618.

2d 233, 234. The court further ruled that the Commission's order was sustained by substantial evidence and was lawful, and affirmed the district court's ruling on that ground. 299 F. 2d at 234–236.

The petitioner raises no question as to the jurisdiction of the district court. Since that was the only issue on which the United States took a position in the court of appeals, we leave the defense of the merits of the Commission's order to that agency. We note, however, that the question presented concerns the application of established rules of construction to the particular tariffs involved (Pet., p. 3); and that the problem of tariff construction involved in this case apparently has no prospective application, because the carriers have published a rule specifying that the lower tariff applies. (Brief in Opposition for Interstate Commerce Commission, pp. 3, 7, fn. 9). In these circumstances, further review appears unwarranted.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

JUNE, 1962.

U.S. GOVERNMENT PRINTING OFFICE: 1962